

**Attorneys for Defendants,  
ROCHE DIAGNOSTICS  
CORPORATION and ROCHE  
DIAGNOSTICS OPERATIONS, INC.  
KEKER & VAN NEST  
ASHOK RAMANI (CA SBN 200020)  
aramani@kvn.com  
710 Sansome Street  
San Francisco, CA 94111  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188**

BARNES & THORNBURG LLP  
DANIEL P. ALBERS (*pro hac vice*)  
JONATHAN P. FROEMEL (*pro hac vice*)  
[daniel.albers@btlaw.com](mailto:daniel.albers@btlaw.com)  
[jonathan.froemel@btlaw.com](mailto:jonathan.froemel@btlaw.com)  
One North Wacker Drive  
Suite 4400  
Chicago, IL 60606  
Telephone: (312) 357-1313  
Facsimile: (312) 759-5646

BARNES & THORNBURG LLP  
DONALD E. KNEBEL (*pro hac vice*)  
LYNN C. TYLER (*pro hac vice*)  
[donald.knebel@btlaw.com](mailto:donald.knebel@btlaw.com)  
[lynn.tyler@btlaw.com](mailto:lynn.tyler@btlaw.com)  
11 South Meridian Street  
Indianapolis, IN 46204  
Telephone: (317) 236-1313  
Facsimile: (317) 231-7433

ROCHE DIAGNOSTICS OPERATIONS, INC.  
Brent A. Harris, Esq. (*pro hac vice*)  
[brent.harris@roche.com](mailto:brent.harris@roche.com)  
9115 Hague Road  
Indianapolis, IN 46250  
Telephone: (317) 521-2000  
Facsimile: (317) 521-2883

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ABBOTT DIABETES CARE INC. and  
ABBOTT LABORATORIES,

#### **Plaintiffs/Counterdefendants,**

V.

ROCHE DIAGNOSTICS CORP.,  
ROCHE DIAGNOSTICS OPERATIONS, INC.  
and BAYER HEALTHCARE LLC.

#### **Defendants/Counterplaintiffs.**

Case No. C05-03117 MJJ

**DECLARATION OF LYNN C.  
TYLER IN SUPPORT OF ROCHE'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT OF NON-  
INFRINGEMENT OF U.S. PATENT  
NO. 6,592,745**

## PUBLIC VERSION

1 I, Lynn C. Tyler, declare and state as follows:

2       1. I am a partner in Barnes & Thornburg LLP, counsel for defendants Roche  
 3 Diagnostics Corporation and Roche Diagnostics Operations, Inc. (collectively, "Roche") in this  
 4 action. I make this declaration based upon personal knowledge, unless otherwise noted, and could  
 5 testify competently to the facts stated herein.

6       2. Attached hereto is Exhibit 1, which is a true and accurate copy of U.S. Patent No.  
 7 6,592,745.

8       3. Attached hereto is Exhibit 2, which is a true and accurate copy of Abbott's Final  
 9 Infringement Contentions-Roche with Exhibits 1-3 only.

10      4. Attached hereto is Exhibit 3, which is a true and accurate copy of excerpts from  
 11 the deposition of Allen J. Bard taken October 18, 2007.

12      5. Attached hereto is Exhibit 4, which is a true and accurate copy of excerpts from  
 13 the deposition of Allen J. Bard taken October 19, 2007.

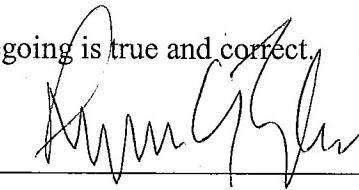
14      6. Attached hereto is Exhibit 5, which is a true and accurate copy of excerpts from  
 15 the deposition of Nigel Surridge taken May 24, 2007.

16      7. Attached hereto is Exhibit 6, which is a true and accurate copy of an excerpt from  
 17 a Roche report concerning its Aviva test strip.

18      8. Attached hereto is Exhibit 7, which is a true and accurate copy of the expert report  
 19 of Dr. Allen J. Bard, without exhibits.

20      9. Attached hereto is Exhibit 8, which is a true and accurate copy of the expert report  
 21 of Dr. Allen J. Bard - Validity of '745 and '164 Patents, without exhibits.

22      10. Attached hereto is Exhibit 9, which is a true and accurate copy of the excerpts  
 23 from a rough draft of the deposition of Dr. Jay Johnson taken October 23, 2007.

1 I declare under penalty of perjury that the foregoing is true and correct.  
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3 By: 

4 Dated: October 25, 2007  
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**Roche's Motion for Partial Summary Judgment of  
Non-Infringement of U.S. Patent No. 6,592,745**

**EXHIBIT 1**

**FILED UNDER SEAL**

**Roche's Motion for Partial Summary Judgment of  
Non-Infringement of U.S. Patent No. 6,592,745**

**EXHIBIT 2**

**FILED UNDER SEAL**

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**EXHIBIT 3**

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**EXHIBIT 4**

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**EXHIBIT 5**

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**EXHIBIT 6**

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**EXHIBIT 7**

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Non-Infringement of U.S. Patent No. 6,592,745**

**EXHIBIT 8**

**FILED UNDER SEAL**

**Roche's Motion for Partial Summary Judgment of  
Non-Infringement of U.S. Patent No. 6,592,745**

**EXHIBIT 9**

**FILED UNDER SEAL**